IMPERIAL IRRIGATION DISTRICT
OPERATING HEADQUARTERS • P.O. BOX 937 • IMPERIAL, CA 92251-0937

August 13, 2010

Secretary of the Commission
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments on FCC Further Notice of Proposed Rulemaking 10-84: Implementation of Section 224 of the Communications Act of 1934, As Amended (WC Docket No. 07-245 and GN Docket No. 09-51) filed at http://fjallfoss.fcc.gov/ecfs2/

To Whom It May Concern:

The Imperial Irrigation District (IID) is a full service public power and water provider located in Imperial County, California. We serve over 145,000 customers with electricity in a rural service area of almost 6,500 square miles in Imperial, Riverside, and San Diego Counties, and manage over 3,400 miles of high-voltage electric distribution lines. IID is providing comments on the Federal Communications Commission (Commission) Further Notice of Proposed Rulemaking (FNPRM) 10-84 in the matter of implementation of Section 224 of the Communications Act of 1934, as amended. The FNPRM commences the process of revising the Commission's pole attachment rules to lower the costs of telecommunications, cable, and broadband deployment and to promote broadband development and use as recommended in the National Broadband Plan. In the FNPRM, you seek comment on, among other things, the Commission's proposal to reduce the variation in pole access rates.

IID shares the Commission's desire to accelerate the pace of broadband deployment, adoption and use throughout the Nation, especially in rural communities such as those we serve. Unfortunately, IID believes that the Commission's pole attachment proposals in the FNPRM, especially those dealing with recommended changes to pole attachment rate setting policies, will not only fail to advance these goals, but would require electric ratepayers to subsidize an already competitive telecommunications industry.

In the FNPRM, the Commission recognizes that "the Commission does not have authority to regulate (and the proposed rules do not apply to) small utilities that are

municipally or cooperatively owned."[1] This is due to the fact that 47 U.S.C. §224 imposes federal pole attachment requirements only upon entities that meet the definition of "utility" in Section 224(a)(1), and the term "utility" is defined so as to specifically exclude "...any railroad, any person who is cooperatively organized, or any person owned by the federal government or any State." Section 224(a)(3) defines a "State" as "any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof."

While IID is an instrumentality of the State of California and is exempt from the application of these proposed rules, we have several reasons to be concerned that the adoption of the rules as proposed could significantly impact IID in the future. First, the Commission has recommended that the Congress eliminate such exemptions in Chapter 6 of the National Broadband Plan[2], which is repeatedly referenced in the FNPRM. Second, States either incorporate federal pole attachment requirements by reference into State law, or their public service or public utility commissions and courts look to the Commission's rules and interpretations as guidance. Finally, cable and telecommunications providers often point to the Commission rules as *de facto* benchmarks of reasonableness, even though such requirements are not binding, formally or otherwise, on instrumentalities of a State such as IID.

IID currently uses the full-cost based rate setting formula set forth in Section 224(e) of 47 U.S.C.§ 224 in setting telecom pole access rates. This formula allows IID to charge a rate that recoups not only a proportionate share of maintenance and administrative costs associated with a pole, but also an amount of the capital cost of the pole calculated in proportion to the attachment's use of the pole, as set forth in the law.

In the FNPRM, this formula is what the Commission considers the "upper bound" of a proposed "zone of reasonableness" for future telecommunication pole attachment rates to fall within.[3] The Commission proposes a "lower bound" in the FNPRM that eliminates the capital cost of the pole as being included in the calculation of a utility's proratable costs in charging for the usable space on a pole under Section 224(e).[4] The Commission notes that while Section 224(e) requires a utility to apportion the cost of providing space on a pole for telecommunications attachments, the law does not define "the cost of providing space."[5] The Commission indicates that it has in the past interpreted "costs" under Section 224(e) to include the same cost categories that it was using in the cable rate formula as defined in Section 224(d), which specifies that the relevant costs of usable space as the "sum of the operating expenses and actual capital

---

[1] FNPRM, Appendix D, Sec. 46
[2] National Broadband Plan, at 112, Recommendation 6.5.
[3] FNPRM, ¶132
[4] FNPRM, ¶133
[5] FNPRM, ¶130

costs of the utility attributable to the entire pole" relying on a fully-distributed cost approach.[6]

At the center of the Commission's FNPRM proposal to eliminate capital costs from the telecommunications rate formula is the Commission's assumption that "most, if not all, of the past investment in an existing pole would have been incurred regardless of the demand for attachments other than the owner's attachments."[7]

IID, representing our public power customers who actually "own" our poles, strongly disagrees with the Commission and believes that setting a "lower bound" of "reasonable rates"[8] to only consider apportioned maintenance and administrative costs, and not including capital costs in the rate setting formula is illogical at best, and patently inconsistent with Section 224 of the Act and therefore unlawful. The actual statutory language of Section 224 clearly states what Congress intended: that pole owners are entitled to recover their *full costs* from providers of telecommunications services, including cable operators, except to the limited extent Section 224 on its face limits such recovery.[9]

IID recommends that all costs associated with the maintenance and operation of a pole, including the capital cost of the pole itself, be included in pole attachment rate setting formulas as prescribed by Section 224. We suspect that one could argue, as TWTC argued in their assessment referenced in the FNPRM that capital costs are "sunk" costs and bear no relation to the costs associated with adding attachments to the pole.[10] However, the costs associated with pole construction are a result of an investment made under certain assumptions and conditions, including the inherent purpose of the pole itself in the electrical delivery system as well as the possible need for pole attachments, in managing the lifespan and recouping the cost of a pole placed in service. According to the American Public Power Association (APPA), most of their public power members uniformly confirm that, in making their purchasing decisions for new poles, their specifications include poles of a larger size and class than would otherwise be required to meet their individual needs. This is the case with IID as well. The decision to upgrade pole size and class requirements, and make the additional investment in higher pole costs, is in anticipation of potential uses of the poles by multiple third-party communications providers. This includes maintaining a warehoused inventory of such poles for new installations and replacement poles.

---

[6] FNPRM, ¶130
[7] FNPRM, ¶135
[8] FNPRM, ¶133
[9] 47 U.S.C. §224
[10] FNPRM, ¶124

Electric utilities plan and construct their networks to ensure long term reliability and cost issues aside, the preference of utilities is not to unnecessarily expend time and resources constantly replacing and rearranging poles to accommodate new pole attachments. According to the APPA, for the past thirty years most municipal utility distribution poles have had a minimum of three users – the electric utility, a telephone provider, and a cable company. The FCC's own rules assume that, in non-urbanized areas, the average number of attaching entities is three, while in urbanized areas, the average number is five. [11] Clearly, additional accommodations for pole attachments by third-parties is a consideration in making the investment in the capital cost of the pole itself, and such capital costs must be considered as proratable costs in establishing pole attachment rates as prescribed by Section 224.

Another reason for continuing to include capital costs in the telecommunications rate formula is the addition of risk stemming from pole attachments. Allowing such pole attachments access creates additional risk to the lifespan of the pole and to the entire electrical delivery system, which is over and above the risk associated with the use of the pole for the electrical system by itself. Without a proportionate financial return on this capital investment built into the pole access rate to compensate the pole owner for accepting additional risks to the pole and to the reliability of the electrical delivery system, this additional risk becomes an added "cost" to the pole owner that, if not included in cost recovery calculations, could be viewed as a subsidy to the communications companies at the expense of the electrical ratepayers.

For example, the IID electrical delivery system is located in a desert environment, and during typical wet weather events (i.e. thunderstorms), pole attachments increase the likelihood of grounding the system in a lightning strike or pole failure due to wind or other causes. Earth grounding methods, while important safety features, are not foolproof in the extreme dry – then wet conditions we sometimes experience in the desert and can fail, increasing the risk of added system damage in the process. Without our ability to charge pole attachments for a proportionate share of the capital cost of the pole to compensate for this increased risk, we are not recovering the true costs to our system associated with these pole attachments, and subsidizing telecommunications companies in the process.

Finally, IID observes that the rates charged the telecom companies for pole access are minimal when compared to the total cost of installing and maintaining a broadband system as a whole. In our view, the record does not support the Commission's assumption that lowering pole attachment rates would lead to faster deployment or greater adoption and use of broadband. The Commission's proposal assumes that communications companies will somehow pass through any savings in pole attachment

[11] 47 C.F.R. §1.1417(c)

costs or offer additional services to their customers, yet there is no requirement compelling such action. Therefore, reducing pole attachment rates, especially below the true cost to the pole owner as the FNPRM-proposed "lower bound" might suggest, from their current statutorily mandated maximum rates, will do little to spur additional investment in broadband systems in rural areas such as Imperial County, but could produce significant negative impacts to utilities like IID, increasing the cost of maintaining the electrical delivery system with pole attachments in place, without a means of recovering the actual costs (including capital costs) incurred in allowing access for pole attachments.

In summary, although IID is statutorily exempt from FCC rulemaking by the Act, we respectfully request that the Commission alter its approach in the FNPRM by following the initial NPRM proposal to apply the telecom rate to broadband providers and limit the application of the cable rate to cable systems that solely provide cable services, as constrained by the federal statutory requirements of Section 224 of the Act.

Thank you for the opportunity to comment on the Commission's FNPRM 10-84. Please feel free to contact us if you have additional questions or responses.

Sincerely,

Brian J. Brady
General Manager